

NOT FOR PUBLICATION IN WEST'S BANKRUPTCY REPORTER:

Case: In re Shirley Hughes, Case No. 01-02126

Decided: February 28, 2005

Decision: Order Dismissing Motion for Relief From Automatic Stay
 as Moot and Directing Clerk to Take Steps to Close Case

Attorneys:

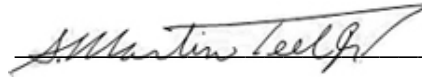
 Gene Jung for Wachovia Bank

 Bernard Englander for Shirley Hughes

It is hereby
ORDERED that the Order set forth below is
hereby signed as an order of the court to be entered
by the clerk.



Signed: February 28, 2005.


S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)	
)	
SHIRLEY HUGHES,)	Case No. 01-02126
)	(Chapter 13)
Debtor.)	

ORDER DISMISSING MOTION FOR RELIEF FROM AUTOMATIC STAY
AS MOOT AND DIRECTING CLERK TO TAKE STEPS TO CLOSE CASE

By an order entered on June 10, 2004, this court vacated an a consent order regarding a motion for relief from the automatic stay filed by Wachovia Bank. The court vacated the consent order based on payments of \$14,581.73 towards postpetition monthly mortgage payment defaults but recognized that there were other expenses owed Wachovia that were incurred postpetition and that had not been paid. In vacating the order, the court set a further hearing for June 24, 2004, to address the amount of those expenses, conditions regarding keeping the automatic stay reinstated, and possible modification of the plan to address such arrears. In other words, the June 24, 2004, hearing was one on Wachovia's motion for relief from the automatic stay. That hearing was continued by consent from time to time and finally

heard on February 24, 2005. The court will dismiss Wachovia's motion as moot.

The debtor's existing confirmed plan was completed before the debtor filed any motion to modify and a discharge was entered on July 22, 2004. This moots Wachovia's motion.

There is no need to grant relief from the stay because the automatic stay terminated already. The automatic stay of acts against the debtor or the debtor's property terminated under 11 U.S.C. § 362(c)(2)(C) upon the entry of a discharge. The automatic stay of acts against Wachovia's collateral, as estate property, terminated under 11 U.S.C. § 362(c)(1) upon the debtor's plan being confirmed and re-vesting the property in the debtor pursuant to 11 U.S.C. § § 1327(b).

Beyond disposing of Wachovia's motion for relief from the automatic stay, the case is ready to be closed. The debtor is not entitled to modify the plan because she already completed plan payments under the confirmed plan. See 11 U.S.C. § 1329(a).

Although the parties appeared to want the court to fix the amount of expenses incurred by Wachovia postpetition, that would be inappropriate. With no plan modification possible, and with the automatic stay already terminated, the administration of the case will not be affected by a resolution of the dispute regarding the amount of postpetition expenses incurred by

Wachovia.¹ The court thus lacks subject matter jurisdiction to hear the parties' dispute regarding such expenses. See Shaw Pittman LLP v. Shin (In re Shin), ___ WL ___ (Bankr. D.D.C. Sept. 22, 2004). The court will thus close the case.²

The closing of the case is not a dismissal to which 11 U.S.C. § 109(g)(2) applies to bar the debtor from re-filing for 180 days. The debtor is thus eligible to file a new bankruptcy case. The dispute regarding expenses can be addressed in such a new case or in an action in a forum other than the bankruptcy court. It is thus

ORDERED that Wachovia Bank's motion for relief from the automatic stay is DISMISSED without prejudice as moot. It is further

ORDERED that the clerk shall take steps to enter an order closing this case.

[Signed and dated above.]

Copies to: Debtor; Debtor's Attorney; Gene Jung; Cynthia A. Niklas.

¹ Even if the stay had not already terminated, determining the amount of the expenses does not bear on carrying out the completed confirmed plan and thus there would be no reason, related to administering the case, to determine the amount of the expenses.

² Closing of the case will serve to terminate the automatic stay even if it were not already terminated. See 11 U.S.C. § 554(c) (scheduled property is abandoned, and thus re-vested in the debtor, upon closing of a case); 11 U.S.C. § 362(c)(1) and § 362(c)(2)(A).